CWP 962 of 2001.

9.7.2007. Present: Mr. Ajay Sharma, Advocate, for the petitioner.

Mr. M.S. Chandel, Advocate General, with Mr. Virender Verma, Addl. AG, for respondent No. 1.

Mr. Sanjeev Kuthiala, Advocate, for respondent Nos. 2 to 4.

The petitioner has preferred this writ petition against the order of the Financial Commissioner (Appeals) passed in revision refusing the recommendations made by the Divisional Commissioner accepting the case of the petitioner herein.

Brief facts arising for disposal of the writ petition are that the petitioner had preferred an appeal before the Collector Sub Division, Amb, challenging the mode of partition confirmed by the Tehsildar. The appeal was filed under Section 14 of the Himachal Pradesh Land Revenue Act, 1953 (hereinafter referred to as 'the Act'). The Collector dismissed the appeal holding that he does not find any reason to interfere with the order of the Assistant Collector Ist Grade. While concluding, he observes:-

> " ….I am constrained to point out the glaring mistakes in the file. The order sheet between 14.4.1987 and 21.2.1990 is either unsigned or missing. This is very serious thing. This speaks volume of the casualness and carelessness of the A.C. Ist Grade and his office. The proceedings deserve proper attention and care. In this case either the A.C. has not written the order sheet or the papers have been pulled out. Any of the two hypotheses is very serious. Since the Tehsildar, who passed the present order has retired, the Tehsildar, Amb shall inquire into this matter and fix up the responsibility…."

Aggrieved by the order of dismissal, the petitioner approached the Divisional Commissioner in revision under Section 17 of the Act. Having perused the entire record, the Divisional Commissioner records:-

> "From a perusal of the record, it is not understood how the case has been so carelessly handled at the lower court level. Ordinarily, these irregularities itself would be enough to quash the proceedings and order denovo proceedings after giving due notice and opportunity to the parties. Besides, there is an order on file of the Settlement Collector who had also ordered fresh proceedings including redrawing of the mode of partition, but from a perusal of the orders it appears that the case was handled in a mechanistic way and the objections of the petitioners have been brushed aside without much reasoning. For instance the reason adduced for not wanting to consider the pre-Settlement possession are not very convincing. The partition order of that time was set aside but the redrawn mode of partition should have mentioned reasons for not considering the pre-settlement position. Much as though we would like to leave settlement records undisturbed the possibility that owing to errors in recording possession during the Settlement operations carrying over to these proceedings and affecting adversely the petitioner's interest cannot be ruled out. The petitioner has been more successful in making out a case for why the orders of the lower court need to be interfered with in this instance. Under these

> circumstances, I find that this revision petition does have merit and would, therefore, recommend the case to the Hon'ble Financial Commissioner (Appeals), Himachal Pradesh with the recommendation that the orders of the lower revenue officer may be quashed and the case may be remanded to the Sub Divisional Collector." (para 5)

When the matter came up before the Financial Commissioner, he did not accept the recommendations made by the Divisional Commissioner. It was held by him that the Commissioner has not made any specific recommendations nor pointed out any illegality or irregularity in the order of the lower court which would necessitate the exercise of powers by the Financial Commissioner under the Act accepting the recommendations made in terms of Section 14.

I have heard learned counsel for the parties and have gone through the record. I do find it strange that the Collector, having noticed that the matter was approached in a most casual manner by the Assistant Collector Ist Grade, has dismissed the appeal filed by the petitioner. He has noticed serious defects in the proceedings and noted that the records were tampered with. Surely, the Assistant Collector was exercising the statutory powers under the Act and having observed serious lapses, was under a duty to have quashed the entire proceedings. To say the least he has not at all applied his mind to the facts of the case. If the proceedings were to be disposed of allunde of the orders/records of the case, what was the necessity to have

exercised statutory powers under the Act. The matter could have been disposed of at the personal whim and fancy of the officer. Surely, the Collector should have been aware that the adjudicatory duties impose an obligation on the authority to maintain the record of the proceedings in a proper manner. If there is deviation in this solemn duty there can be no other course but to quash the proceedings.

The Financial Commissioner has gone a step further. Without considering that the Divisional Commissioner has considered in detail the irregularities which have been made and committed by the Settlement Collector, the Collector as also the Assistant Collector, has acted in a mechanical manner, and turned down the recommendations on the ground that no irregularity has been found. This is against the very record which was before the Financial Commissioner and can lead to no other conclusion that he never applied his mind to the solemnity of the proceedings or the statutory obligations and duties imposed upon the authorities to act in a manner which is fair just and reasonable. His order reveals that eagerness to dispose of the matter, he overlooks the glaring irregularities which have been committed and proceeded with the matter as if there has been a compliance of all statutory provisions. This was neither expected nor could it form the basis of the order of the Financial Commissioner. If he had cared to go through the record, it would be clearly evident that the casual approach adopted by the Collector as also the Assistant Collector Ist Grade did not commend acceptance of the purported findings and exercise of the adjudicatory duties imposed upon them. To say the

least, the order discloses a total non-application of mind. In the circumstances, this writ petition is accepted, the order of the Financial Commissioner Annexure P-4 is quashed and set aside and a direction issued to decide the matter afresh in accordance with law after hearing both the parties. The financial Commissioner will consider in detail the implications of the orders passed by the Collector as also the Divisional Commissioner while deciding the matter. Needless to say being a Revisional Authority will pass a speaking order on all the points urged. I have deliberately refrain from expressing any opinion on the merits of the case. The writ petition is disposed of with the above directions. There shall be no order as to costs. Parties to appear before the Financial Commissioner on 10.9.2007, who will proceed with the matter with expedition.

9th July, 2007. **(Dev Darshan Sud)**
(cm) **Judge.**